

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JASON CHARLES KOPP,  
Plaintiff,  
v.  
THOMAS A.,  
Defendant

No. 2:22-CV-0282-TLN-DMC-P

## FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

On June 6, 2023, the Court directed Plaintiff to show cause why this action should not be dismissed for failure to prosecute by way of default proceedings against the only remaining defendant, Thomas A., who has waived service but not responded to the complaint. Plaintiff has been warned that failure to comply with court orders may result in dismissal of this action.

See Local Rule 110. To date, Plaintiff has not filed a response to the order to show cause or otherwise prosecuted his action against Defendant Thomas A.

The Court must weigh five factors before imposing the harsh sanction of dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of

1 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;  
2 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,  
3 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate  
4 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,  
5 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where  
6 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.  
7 1986). Dismissal has also been held to be an appropriate sanction for failure to comply with an  
8 order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.  
9 1992).

10 Having considered these factors, and in light of Plaintiff's failure to respond to the  
11 Court's order to show cause or prosecute this case, dismissal of this action is appropriate.

12 Based on the foregoing, the undersigned recommends that this action be dismissed,  
13 without prejudice, for lack of prosecution and failure to comply with court rules and orders.

14 These findings and recommendations are submitted to the United States District  
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
16 after being served with these findings and recommendations, any party may file written  
17 objections with the court. Responses to objections shall be filed within 14 days after service of  
18 objections. Failure to file objections within the specified time may waive the right to appeal. See  
19 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21 Dated: July 24, 2023



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DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE

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